

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CMG HOLDINGS GROUP, as successor to :  
XA THE EXPERIENTIAL AGENCY, INC., :

Plaintiff, :

vs. :

JOSEPH WAGNER, HUDSON GRAY LLC, :  
DARREN ANDERECK, JESSIE LOMMA, :  
MICHAEL DAY, JEAN WILSON, ESTELLE :  
PIZZO, STUDIO AG, LLC, REMIGIO GUDIN, :  
and MIXED COMPANY, INC., :

Defendants. :  
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JOSEPH WAGNER, JEFFREY SMITH, DARREN :  
ANDERECK, and JESSIE LOMMA, :

Third-Party Plaintiffs, :

vs. :

GLENN LAKEN and ALEXIS LAKEN, :

Third-Party Defendants. :  
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Civil Action No.: 15-cv-05814-JPO

**NOTICE OF MOTION TO  
DISMISS PLAINTIFF'S  
FIRST AMENDED COMPLAINT**

**PLEASE TAKE NOTICE** that, upon the annexed Declaration of Scott R. Matthews, Esq., the Declaration of Joseph Wagner, the Declaration of Jean Wilson, the Declaration of Remigio Gudin, and the exhibits annexed thereto, and upon all prior pleadings and proceedings in this matter, defendants Joseph Wagner (“Wagner”), HudsonGray, Inc., incorrectly sued herein as Hudson Gray LLC (“HudsonGray”), Darren Andereck, Jessie Lomma, Michael Day, Jean Wilson, Estelle Pizzo, Studio AG, LLC, Remigio Gudin, and Mixed Company, Inc. (collectively, the “Defendants”), will move this Court for an Order, before the Honorable J. Paul Oetken, in Courtroom 706 at 40 Foley Square, New York, New York 10007, on a date and time to be

determined by the Court, pursuant to Federal Rules of Civil Procedure Rule 12(b)(6), for an Order dismissing the First Amended Complaint, dated June 26, 2015 (the “Amended Complaint”), with prejudice, as follows:

- (1) all RICO claims as against all Defendants (claims 1-4);
- (2) all claims as against Wagner (claims 1-17);
- (3) the fifth claim for declaratory judgment;
- (4) the sixth claim for breach of contract as against Wagner, HudsonGray, Darren Andereck, Jessie Lomma, Michael Day, Jean Wilson, and Remigio Gudin (the “HudsonGray Defendants”);
- (5) the seventh claim for injunctive relief and the imposition of a constructive trust as against the HudsonGray Defendants;
- (6) the eighth and eleventh claims for breach of fiduciary duty and aiding and abetting the breach of fiduciary duty, respectively, as against all Defendants;
- (7) the tenth claim for tortious interference with contract as against HudsonGray;
- (8) the twelfth claim for misappropriation and unfair competition as against all Defendants;
- (9) the thirteenth claim for usurpation of a corporate opportunity as against HudsonGray, Studio AG, LLC, and Estelle Pizzo; and
- (10) the claim for punitive damages as against all Defendants.

Plaintiff's papers in opposition to the motion shall be due on or before August 21, 2015, and Defendants' reply papers in further support of the motion shall be due on or before August 28, 2015.

Dated: New York, New York  
August 7, 2015

**WINDELS MARX LANE & MITTENDORF, LLP**

By: \_\_\_\_\_/s

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